

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
CENTRAL DIVISION**

**SYLVESTER SMITH**

**PLAINTIFF**

**v.**

**4:19CV00760 - BRW**

**SWIFT TRANSPORTATION COMPANY  
OF ARIZONA, LLC, et al.**

**DEFENDANTS**

**ORDER**

Pending is Defendants' Motion for Partial Summary Judgment (Doc. No. 9). Plaintiff has responded.<sup>1</sup> For the reasons below, the motion is DENIED without prejudice.

**I. BACKGROUND**

On July 15, 2016, Defendant Michael Somontes (Somontes) was driving a truck owned by Defendant Swift Transportation (Swift). On that day, the truck collided with Plaintiff while traveling in the right lane of traffic eastbound on Interstate 440 in Little Rock, Arkansas. Swift admits that Somontes acted as its agent and within the scope of his agency relationship when the collision occurred. Plaintiff asserts negligence claims against both Somontes and Swift for the operation of the vehicle and an independent negligent supervision claim against Swift.

**II. DISCUSSION**

Defendant relies on Arkansas law that prohibits Plaintiff from proceeding on multiple theories of liability once the Defendant concedes liability based on one theory.<sup>2</sup> An exception to this rule exists when the Plaintiff makes a valid punitive damages claim based on Defendant's

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<sup>1</sup>Doc. Nos. 14, 17.

<sup>2</sup>*Elrod v. G & R Const. Co.*, 275 Ark. 151, 154, 628 S.W.2d 17, 19 (1982).

independent negligent activities.<sup>3</sup> Defendant argues that Plaintiff has failed to plead facts or develop sufficient evidence to support a punitive damages claim, thereby making his independent negligent supervision claim void.

To continue with his negligent supervision claim against Swift, Plaintiff must offer sufficient admissible evidence to support a punitive damages award related to this claim.<sup>4</sup> Plaintiff's sole supporting evidence in the record is his own affidavit asserting that the passenger accompanying Somontes made comments indicating that he had recognized Somontes's reckless driving and had informed Swift of the behavior. I am dubious as to whether Plaintiff has valid punitive damages claim on the current record. However, the discovery period remains open until February 24, 2021. Defendant may refile its motion after the discovery period has closed.

### **CONCLUSION**

Based on the findings of fact and conclusions of law above, Defendant's Motion for Partial Summary Judgment (Doc. No. 9) is DENIED without prejudice.

IT IS SO ORDERED this 10th day of August, 2020.

Billy Roy Wilson  
UNITED STATES DISTRICT JUDGE

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<sup>3</sup>*Wheeler v. Carlton*, No. 3:06 CV 00068 GTE, 2007 WL 30261, at \*12 (E.D. Ark. Jan. 4, 2007).

<sup>4</sup>Ark. Code Ann. § 16-55-206.